IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.A.No.398 SB of 1995
Date of decision: 26.4.2007

Amarjit

….. Appellant

State of Haryana

…..Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

Present Mr. Baldev Singh, Sr. Advocate with
Mr. Ravi Kumar, Advocate, for the appellant.

Mr. Deepak Girotra, AAG, Haryana.

JUDGMENT :

This order will dispose of Criminal Appeal No.398-SB of 1995 and Criminal Appeal no.458 SB of 1995 filed by Amarjit and Sushil Kumar respectively against their conviction under sections 392/397/452/506 IPC and Section 27 of the Indian Arms Act, 1959, for which they have been sentenced as under:-

Sushil Kumar (i) RI for seven years and fine of Rs.1000/- in default, to undergo further RI for one year under sections 392/397 IPC.

(ii) RI for three years and fine of Rs.500/-, in default, to undergo further RI for six months under section 452 IPC.

(iii) RI for six months under section 506 IPC.

(iv) RI for six months under section 27 of the Indian Arms Act, 1959.

Amarjit (i) RI for seven years and fine of Rs.1000/- in default, to undergo further RI for one year under sections 392/394 IPC.

(ii) RI for three years and fine of Rs.500/-, in default, to undergo further RI for six six months under section 452 IPC.

(iii) RI for six months under section 506 IPC.

(iv) RI for six months under section 27 of the Indian Arms Act, 1959.

All the sentences are to run concurrently.

On 30.3.1988, at 2 PM Madan Mohan Mittal PW5 got recorded a statement from Dalip Singh PW11 to the effect that he was Manager of the State Bank of Patiala, Hospital Road, Karnal. Gulab Chand PW10 was employed as a Watchman and Mohan Lal Arora was employed as a Cashier. At about 1 PM, Mohan Lal Arora went to the main Branch NDRI to bring cash. Two persons of young age, one of them, aged about 25-26 years of blackish colour having old mark of injury on the left side of his face and the other person was the age of 30/31 years of wheatish colour, long height, both wearing pants and shirts, came at the counter of the bank. The aged person came behind the witness and put a pistol on the front side of his chest and asked him not to raise any alarm and

hand over the cash, otherwise,he will be shot dead. The other person who was also having a pistol, opened the cash box forcibly and removed the cash from the cash box. Both of them pushed and locked him and Gulab Chand, Watchman was already inside the cabin. When they wanted to raise alarm, one of the two culprits fired a shot. Pellets of fire hit the wall and the other person struck the 'butt' of his pistol on the head of the victim and directed him not to raise alarm, otherwise he will be killed. Both the accused ran away after bolting the door of the cabin from outside. The witness opened the cabin after pushing the door and breaking up the bolt. It was found that a sum of Rs.20,580/- was deficient as per details of currency notes mentioned. He was proceeding to lodge report and met Dalip Singh, Inspector PW11 on the way who recorded his statement. PW11 Inspector Dalip Singh inspected the place of occurrence, prepared a rough site plan, took into possession one fired cartridge and some pellets from the spot and got the crime scene photographed. He arrested accused Sushil Kumar and recovered a country made pistol from his right side dab and one live cartridge of .12 bore from the right pocket of his pant. He declined to participate in test identification parade vide his statement Ex.PM/1 recorded by the then CJM, Karnal PW6 Shri VS Malik. Sushil Kumar accused made a disclosure statement Ex.PJ in pursuance of which amount of Rs.20,580/- was recovered

from the plastic bag concealed in a ditch near Randhir Cinema Karnal. The second accused Amarjit surrendered in court and he was arrested. Thereafter, investigation was conducted by SI Waryam Singh. On application of the Investigating Officer, PW7 Tajinder Punia, Tehsildar conducted test identification parade in District Jail, Karnal wherein Gulab Chand was called inside the jail and asked to identify the culprit out of 11 persons but he could not identify. Then Madan Mohan Mittal PW5 was called inside the jail who identified Amarjit, accused correctly sitting at Sr.No.4 vide his statement Ex.PL. As per report of the FSL, empty cartridge pellet had been fired from the country made pistol recovered from Sushil Kumar. After investigation, the accused persons were sent up for trial.

The prosecution examined Dr. Ramesh Chander Mittal, PW1, Dr. Anil Sharma, PW2, Manohar Lal, Draftsman PW3, Constable Satbir Singh PW4, Madan Mohan Mittal PW5, Shri VS Malik, PW6, PW7 Tajinder Punia, Tehsildar, ASI Parkash Chand,PW8, HC Daya Nand PW9, Gulab Chand PW10 and Inspector Dalip Singh PW11.

In their statements under section 313 Cr.PC, the accused denied the prosecution allegations and alleged false implication. Sushil Kumar stated that he was falsely implicated at the instance of Madan Mohan Mittal who wanted to get a reward of

Rs.50,000/- and some increments from the bank. Amarjit, accused made a similar statement. He also stated that during identification parade, a police officer had pointed to Madan Mohan Mittal towards him. After considering the evidence on record, the trial court convicted and sentenced the appellants. It was held that evidence of Madan Mohan Mittal PW5 and Gulab Chand PW10 with regard to bank robbery was reliable and recovery of pellets and fired cartridges by Dalip Singh PW11, photograph Ex.PF taken by PW4 Satbir Singh and the report of the FSL showing that the cartridge case 'CI' had been fired from the country made pistol 'W1' and pellets recovered could form part of crime cartridge, fully proved the robbery. Medical evidence about injuries on Madan Mohan Mittal who was examined by Dr. Ramesh Chander Mittal PW1 on the same day, showed that there was head injury which was not self-suffered and the said injury which was attributed to Amarjit accused, established presence of the said witness at the place of occurrence. There was recovery of the amount from Sushil Kumar in pursuance of disclosure statement. Sushil Kumar was arrested on the date of occurrence and was medically examined by PW2 Dr. Anil Sharma at 10.20 PM vide MLR Ex.PD, which corroborated version of PW11 Dalip Singh, Investigating Officer that at the time of arrest, he gave a danda' blow when he tried to run away. He declined to join identification parade, as proved by

PW6 Shri VS Malik. He was duly identified in court. Amarjit had been duly identified in the identification parade and he was also identified in court by Madan Mohan Mittal PW5, who had sufficient time and opportunity to see his face. Recovery of the amount in pursuance of disclosure statement was admissible.

I have heard learned counsel for the appellants and perused the record.

Learned counsel for the appellants submitted that there was serious dispute about identity of the accused as PW10 Gulab Chand was not able to identify him and that no recovery was effected from Amarjit. He was merely attributed a simple injury to PW5 Madan Mohan Mittal.

Learned counsel for Sushil Kumar, accused submitted that he declined to participate in identification parade as his identity was already disclosed to the witnesses and the version of the prosecution witnesses was not reliable in view of contradictions and improvements.

There is no merit whatsoever in the contentions raised on behalf of the appellants. Evidence of Madan Mohan Mittal PW5, who was Incharge of the bank at the relevant time and who was sitting at the seat of the Cashier, as the Cashier had gone to the main Branch to collect cash, is quite natural and trustworthy. He has suffered head injury on being hit by Amarjit, accused with the

'butt' of his pistol. He clearly deposed that Amarjit, accused put pistol on his chest and secured him in his grips and gave threat to shoot him. Sushil Kumar opened the cash box and removed the cash. Both the accused were armed with pistols on account of which Madan Mohan Mittal PW5 and his colleague Gulab Chand PW10 could not resist their act of robbery. One of the accused hit the witness with the 'butt' of the pistol and the other accused fired a shot which hit the wall of the bank. Identification of both the accused is clearly established. Madan Mohan Mittal PW5 had sufficient opportunity to see the accused and there is no reason to doubt identification of the accused by him in the court itself. Identification of Amarjit is corroborated by his identification in the identification parade. Sushil Kumar, accused had declined joining of identification parade. Sushil Kumar was arrested on the same day. Recovery was effected at his instance. Stolen amount was duly identified as the packets of the currency notes carried the signatures of Madan Mohan Mittal PW5. Detail of currency notes was duly given in the FIR itself. In the cross-examination,nothing adverse could be elicited. Minor contradictions cannot be a ground to disbelieve a witness. PW6 Shri VS Malik, the then Chief Judicial Magistrate, Karnal clearly proved refusal of Sushil Kumar to participate in identification parade. PW7 Tajinder Punia , Tehsildar proved the identification of Amarjit by Madan Mohan

Mittal PW5. Merely because the other witness could not identify him, cannot be a ground to doubt his identification. PW10 Gulab Chand who was Watchman, has fully supported the version given by Madan Mohan Mittal PW5 about the accused persons having committed the bank robbery. Inspector Dalip Singh PW11 has duly proved the disclosure statement and recovery at the instance of Sushil Kumar, accused. He also proved recovery of country made pistol and the cartridge as also recovery of pellets from the spot. The witnesses had no reason to falsely implicate the accused.

Thus, the case of the prosecution stands fully established from the clinching evidence available on record. Accordingly, conviction of the appellants is upheld.

As regards sentence, mere delay which has taken place during the pendency of the proceedings, cannot be a ground to take a very liberal view on the question of sentence, having regard to the seriousness of the offence of bank robbery in broad day light. No interference is called for on the question of sentence also.

For the above reasons, both the appeals are dismissed.

April 26, 2007 (Adarsh Kumar Goel)
'gs' Judge